

FACT SHEET

Americans with Disabilities Act - Title I employment of persons with disabilities An Overview

(Public Law 101-336)

Who must comply with Title I of the ADA?

Private employers, state and local governments, employment agencies, labor unions, and joint labor management committees must comply with Title I of the ADA. The ADA calls these "covered entities." For simplicity, this fact sheet generally refers to all covered entities as "employers."

The definition of "employer" includes persons who are "agents" of the employer, such as managers, supervisors, foremen, or others who act for the employer, such as agencies used to conduct background checks on candidates. Therefore, the employer is responsible for the actions of such persons who may violate the law. These coverage requirements are similar to those of Title VII of the Civil Rights Act of 1964.

Religious organizations are covered by the ADA, but they may give employment preference to people of their own religion or religious organization.

The legislative branch of the U.S. Government and certain individuals appointed by elected officials of state and local governments are covered by the ADA, but are governed by different enforcement procedures established by Congress for its employees.

Executive agencies of the U.S. Government are exempt from the ADA, but these agencies are covered by similar requirements under the Rehabilitation Act of 1973. Also exempted from the ADA (as they are from Title VII of the Civil Rights Act) are corporations fully owned by the U.S. Government, Indian tribes, and bona fide private membership clubs that are not labor organizations and that are exempt from taxation under the Internal Revenue Code.

What are the compliance dates?

State and local governments, regardless of size: January 26, 1992
Other covered entities with 25 or more employees: July 26, 1992
Other covered entities with 15 or more employees: July 26, 1994

Who is protected by Title I?

The ADA prohibits employment discrimination against "qualified individuals with disabilities." A qualified individual with a disability is "an individual with a disability who meets the skill,

experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job."

A person with a "disability" is an individual who

- has a physical or mental impairment that substantially limits one or more of his/her major life activities,
- has a record of such an impairment, or
- is regarded as having such an impairment.

Individuals who currently use drugs illegally are not individuals with disabilities protected under the Act when an employer takes action because of their continued use of drugs. This includes people who use prescription drugs illegally as well as those who use illegal drugs. However, people who have been rehabilitated and do not currently use drugs illegally, or who are in the process of completing a rehabilitation program may be protected by the ADA.

Homosexuality, bisexuality, and a number of other behavior disorders are not disabilities under the ADA.

For more information, the Disability and Communication Access Board has published a detailed fact sheet titled "Americans with Disabilities Act - Title I - Individual with a Disability."

What employment practices are regulated by Title I of the ADA?

Employers cannot discriminate against people with disabilities in regard to any employment practices or terms, conditions, and privileges of employment, including application, testing, hiring, hiring, assignments, evaluation, disciplinary action, training, promotion, medical examinations, layoff/recall, termination, compensation, leave, and benefits.

What actions constitute discrimination?

Actions that constitute discrimination include the following:

- limiting, segregating, or classifying a job applicant or employee in a way that adversely affects employment opportunities for the applicant or employee because of her or his disability;
- participating in a contractual or other arrangement or relationship that subjects an employer's qualified applicant or employee with a disability to discrimination;
- denying employment opportunities to a qualified individual because she/he has a relationship or association with a person with a disability;
- refusing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the accommodation would pose an undue hardship on the business;

- using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability unless they are job-related and necessary for the business;
- failing to use employment tests in the most effective manner to measure actual abilities. Tests must accurately reflect the skills, aptitude, or other factors being measured, and not the impaired sensory, manual, or speaking skills of an employee or applicant with a disability (unless those are the skills the test is designed to measure), and
- discriminating against an individual because she/he has opposed an employment practice of the employer or filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of the Act.

What is an employer's obligation to provide reasonable accommodation?

Reasonable accommodation is any change in the work environment or in the way things are usually done that results in an equal employment opportunity for an individual with a disability. An employer must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would cause an undue hardship on the operation of its business.

Some examples of reasonable accommodation include the following:

- making existing facilities used by employees readily accessible to, and usable by, an individual with a disability;
- job restructuring;
- modifying work schedules;
- reassignment to a vacant position;
- acquiring or modifying equipment or devices;
- adjusting or modifying examinations, training materials, or policies; and
- providing qualified readers or interpreters.

An employer is not required to provide an accommodation if it will impose an undue hardship on the operation of its business. Undue hardship is any action that is "excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business."

In determining undue hardship, factors to be considered include the nature and cost of the accommodation in relation to the size, the financial resources, the nature and structure of the employer's operation, as well as the impact of the accommodation on the specific facility providing the accommodation.

For more information, the Disability and Communication Access Board has published a detailed fact sheet titled "Reasonable Accommodation."

Are there any health or safety defenses?

An employer may require that an individual not pose a "direct threat" to the health or safety of herself/himself or others. A health or safety risk can only be considered if it is "a significant risk of substantial harm." Employers cannot deny an employment opportunity merely because of a slightly increased risk. An assessment of "direct threat" must be strictly based on a valid medical analysis and/or other objective evidence, and not on speculation. Like any qualification standard, this requirement must apply to all applicants and employees, not just to people with disabilities.

If an individual appears to pose a direct threat because of a disability, the employer must first try to eliminate or reduce the risk to an acceptable level with reasonable accommodation. If an

effective accommodation cannot be found, the employer may refuse to hire an applicant or discharge an employee who poses a direct threat.

What restrictions exist on pre-employment inquiries and medical examinations?

An employer may not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. An employer may not make medical inquiries or conduct a medical examination until after a job offer has been made. A job offer may be conditioned on the results of a medical examination or inquiry, but only if this is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs.

For more information, the Disability and Communication Access Board has published two detailed fact sheets titled "Americans with Disabilities Act - Title I - Hiring Process" and "Americans with Disabilities Act - Title I - Medical Exams."

Does the ADA address drug and alcohol abuse?

It is not a violation of the ADA for employers to use drug tests to find out if applicants or employees are currently illegally using drugs. Tests for illegal use of drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal users of drugs and alcoholics to the same performance and conduct standards as other employees.

For more information, the Disability and Communication Access Board has published a detailed fact sheet titled "Americans with Disabilities Act - Title I - Drugs and Alcohol Abuse."

Who enforces Title I of the ADA?

The U.S. Equal Employment Opportunity Commission (EEOC) has responsibility for enforcing compliance with Title I of the ADA. The procedures for processing charges of discrimination under the ADA are the same as those under Title VII of the Civil Rights Act of 1964.

Remedies that may be required of an employer who is found to have discriminated against an applicant or employee with a disability include compensatory and punitive damages, back pay, front pay, restored benefits, attorney's fees, reasonable accommodation, reinstatement, and job offers.

For more information, the Disability and Communication Access Board has published a detailed fact sheet entitled "Americans with Disabilities Act - Title I - Enforcement."

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